

§ 44.200

28 CFR Ch. I (7–1–12 Edition)

the Immigration Reform and Control Act of 1986, or his or her designee.

[Order No. 1225–87, 52 FR 37409, Oct. 6, 1987, as amended by Order No. 1520–91, 56 FR 40249, Aug. 14, 1991; Order No. 1807–93, 58 FR 59948, Nov. 12, 1993]

Subpart B—Prohibited Practices

§ 44.200 Unfair immigration-related employment practices.

(a)(1) *General.* It is unfair immigration-related employment practice for a person or other entity to knowingly and intentionally discriminate or to engage in a pattern or practice of knowing and intentional discrimination against any individual (other than an unauthorized alien) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—

(i) Because of such individual's national origin; or

(ii) In the case of a protected individual, as defined in § 44.101(c), because of such individual's citizenship status.

(2) *Intimidation or retaliation.* It is an unfair immigration-related employment practice for a person or other entity to intimidate, threaten, coerce, or retaliate against any individual for the purpose of interfering with any right or privilege secured under 8 U.S.C. 1324b or because the individual intends to file or has filed a charge or a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under that section.

(3) *Documentation abuses.* A person's or other entity's request, for purposes of satisfying the requirements of 8 U.S.C. 1324a(b), for more or different documents than are required under such section or refusing to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual shall be treated as an unfair immigration-related employment practice relating to the hiring of individuals.

(b) *Exceptions.* (1) Paragraph (a) of this section shall not apply to—

(i) A person or other entity that employs three or fewer employees;

(ii) Discrimination because of an individual's national origin if the dis-

crimination with respect to that person or entity and that individual is covered under 42 U.S.C. 2000e–2; or

(iii) Discrimination because of citizenship which—

(A) Is otherwise required in order to comply with law, regulation, or Executive Order; or

(B) Is required by Federal, State, or local government contract; or

(C) Which the Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government.

(2) Notwithstanding any other provision of this part, it is not an unfair immigration-related employment practice for a person or other entity to prefer to hire, recruit or refer for a fee an individual who is a citizen or national of the United States over another individual who is an alien if the two individuals are equally qualified.

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Subpart C—Enforcement Procedures

§ 44.300 Filing a charge.

(a) *Who may file.* (1) Any individual who believes that he or she has been adversely affected directly by an unfair immigration-related employment practice, or any individual or private organization authorized to act on such person's behalf, may file a charge with the Special Counsel.

(2) Any officer of the Immigration and Naturalization Service who believes that an unfair immigration-related employment practice has occurred or is occurring may file a charge with the Special Counsel.

(b) *When to file.* Charges shall be filed within 180 days of the alleged occurrence of an unfair immigration-related employment practice. For purposes of determining when a charge is timely under this paragraph, a charge mailed to the Special Counsel shall be deemed filed on the date it is postmarked.

(c) *How to file.* Charges may be:

(1) Mailed to: Office of Special Counsel for Immigration-Related Unfair